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## **Impact of stricter H1b visa norms on Indian companies**

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### **Abstract**

This paper is an analysis of Impact of H1B Visa on Indian Companies. In today's era economies of the world have become so integrated that any change in one country's policies has its effect on other countries too and impact becomes even more remarkable when the other country was a major beneficiary of policy in the pre reform period. Same is the case with H1B visa curbs being talked about by US Government especially after the New President Mr. Donald Trump has come to the scene. The 45th President of the United States brought with him to the Presidency, a refreshing agenda- America First. And one of the unique selling propositions of "America First" was a pre-planned and sustained attack on the H1B system of visas that brings in "specialty occupation workers" into the United States. The Department of Homeland Security and Justice Department are promising greater scrutiny of the H-1B visa program, through which many foreign engineers are hired as high-skilled labor. President Donald Trump's stricter approach to immigration has already raised concerns with Silicon Valley companies that rely on immigrant talent to fill key roles.

**Keywords:** Indian companies, US government, H1B visa

### **1. Introduction**

The H-1B is a visa in the United States under the Immigration and Nationality Act, section 101(a) (17) (H) which allows U.S. employers to employ foreign workers in specialty occupations. If a foreign worker in H-1B status quits or is dismissed from the sponsoring employer, the worker must either apply for and be granted a change of status, find another employer (subject to application for adjustment of status and/or change of visa), or leave the United States. H-1Bs are the most coveted work visas. In 2016, the US Citizenship and Immigration Services announced that they received 2,36,000 H-1B petitions within five days of opening the process, more than thrice the number of mandated cap of 65,000 in the general category. Each year, generally on April 1, the H-1B season commences for the following federal fiscal year; employment authorizations are granted on October 1. The biggest beneficiaries of H-1B visas are Indians, followed by the Chinese. In 2014, 70% of total H-1B petitions approved were from Indians nearly 86% of the H-1B visas issued for workers in computer occupations go to Indian workers, according to a Computerworld analysis of government data obtained through a Freedom of Information Act request.

### **2. Objective of Study**

The study has the following objectives:

1. To study the US government's proposed changes to the H-1B visa.
2. To examine the impact of the proposed of H1B visa norms on Indian companies.

### **3. Research Methodology**

The researcher used an explorative analysis technique supported from various journals, annual, reports, magazines and covering wide assortment of newspaper to get an analysis of impact of H1B visa on Indian companies. In keeping with the objectives of the study, the analysis style is of descriptive in nature. Available secondary data was extensively used for the study.

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#### 4. Terms and Conditions of H1b Visa

The H-1B is available for employees in specialty occupations, those that require at least a four-year Bachelor's degree in a specific field of study, or an equivalent combination of experience and education, to be able to perform the duties of the position. Examples include architects, engineers, scientists, teachers, accountants, many business manager positions, and many IT positions. Often foreign national employees that are hired as recent graduates, with Optional Practical Training (OPT) work authorization, look for employers that will sponsor them for an H-1B visa. H-1B status is initially granted for a 3-year period, and can be extended for an additional three years. Extensions beyond six years are possible where the employee has been sponsored by an employer toward becoming a U.S. Permanent Resident.

The H-1B is a nonimmigrant, or temporary, visa status. However, it is one of the few nonimmigrant statuses that allow the employee to have "dual intent", meaning the intent to apply for Permanent Residence and remain in the U.S. This is a main reason why H-1B status is preferred by both employers and employees over other visas. Employers sponsoring an H-1B employee must agree to several conditions of employment as part of the petition process. The employer agrees to these conditions when filing a Labor Condition Application (LCA) with the U.S. Department of Labor (DOL), which must be posted at the location of employment prior to filing the H-1B petition with USCIS. The employee's salary cannot be less than the prevailing wage, as determined by the DOL for the occupation and location of employment, or the wages paid to other similarly-situated employees of the company in the same position, whichever is higher. Furthermore, the employee must be given the same benefits and working conditions as similarly-situated employees of the company. The company must pay the H-1B employee the required wage rate, as listed on the LCA, for as long as the employee is employed in H-1B status pursuant to that LCA. The H-1B employee must continue to receive the required salary even when the company reduces the salaries of other similarly-situated employees.

With limited exceptions, the employer must pay all costs associated with filing the LCA and H-1B petition, including attorney fees and filing fees. The employee may not reimburse the employer for these costs and the employer may not take these costs out of the employee's salary.

The employer may not put the employee on an unpaid leave of absence, or "bench" the employee. The employer must continue employing the H-1B employee throughout the entire period covered by the H-1B petition and pay the required wage unless the employer terminates the employment, following the requirements described below. A company cannot sponsor an H-1B employee where the employment of the H-1B employee will adversely affect the working conditions of similarly-employed workers or where the company has experienced a recent strike, lockout or work stoppage. If the employer terminates an H-1B foreign national's employment before the expiration of the H-1B petition, the employer must: 1) notify the DOL and USCIS of the termination; 2) clearly notify the employee of their termination; and 3) pay for travel expenses for the employee's return to their country. It is recommended that the notice of termination and offer to pay travel expenses be provided to the employee in writing, as a record of

compliance with these requirements. The employer's obligation to pay the employee the required wage continues until these three obligations have been met.

#### 5. What Are The Proposed Changes?

California Congresswoman Zoe Lofgren introduced a bill, titled "High-Skilled Integrity and Fairness Act of 2017, in the House of Representatives, which has elicited a mixed response from the Silicon Valley of USA and the IT hub of India. The legislation was introduced with an aim to overhaul the work visa programme. If passed by majority vote in both houses of Congress, it will be harder for those applying for H-1B visas as it has called for more than doubling the minimum salary of H-1B visa holders to USD 130,000. The move would make it difficult for American companies to use the programme to replace their own employees with foreign workers. Among other things, the bill stipulates that employers should offer a vacant position to an equally or better qualified American worker before seeking an H-1B or L-1 visa holder. It also proposed cancelling 20 per cent of the annually allocated H-1B visas for small and startup employers in order to ensure that small businesses get an opportunity to compete for high-skilled workers.

Salient features of High-Skilled Integrity and Fairness Act of 2017:

The bill sought a sharp rise in the wages of H1B visa holders from \$60,000 to \$130,000 to the dismay of the IT companies in the United States which source cheap labor from the Asian countries including India by means of H1B and other visa programs.

It is aimed at ensuring fair recruitment and equal treatment of all foreign workers based on their skills and irrespective of their national origin by removing the 'per country' cap on immigrant visas for jobs in the US. It seeks to set aside 20% of the annually issued H1B visas for small enterprises and startups in USA in a bid to ensure an opportunity for small businesses to hire highly-qualified talent from across geographies. It raises the salary level at which H1B dependent employer are exempt from attestation requirements to a new required wage level of 35 percentile points above the median national annual wage for Computer and Mathematical Occupations published by the Department of Labour Occupational Employment Statistics (roughly \$132,000), which would be adjusted in the future without the need for new legislation, and eliminates the Master's Degree exemption for dependent employers.

The legislation sets aside 20% of the annually allocated H1B visas for small and start-up employers (50 or fewer employers) to ensure small businesses have an opportunity to compete for high-skilled workers, while still protecting against outsourcing. It among other things removes visa hurdles for students and other temporary visa holders by building a bridge from F-1 student status to Lawful Permanent Residence and removes paperwork burdens by streamlining H1B filing requirements and reducing administrative costs. The legislation tightens employee protection by stipulating that employers may not reduce beneficiary wages, regardless of whether the deduction is in accordance with a voluntary authorisation by the employee. Under the H1B and L1 Visa Reform, the Department of Labor (DOL) and the Department of Homeland Security (DHS) would have additional oversight authority to

investigate fraud and abuse as well as to increase penalties for companies that violate the bill's requirements.

### **The Keeping American Jobs Act**

The Keeping American Jobs Act was brought back into the fray by Derek Kilmer (Democrat) and Doug Collins (Republican) that aims to prevent companies from making their existing American workers train H-1B tech workers in the country before permanently moving those jobs overseas, a process popularly known as "offshoring". The Bill was first introduced in Congress in February 2016 under the Obama administration. It calls for Immigration and Nationality Act to be tweaked in such a manner "to modify the provisions governing employment of non-immigrants under Section 101(a)(15)(H) (i)(b) of that Act to prevent the transfer of knowledge from United States workers for the purpose of facilitating their jobs being moved abroad" according to the Economic Times. The whole impetus for this Bill probably came from certain high profile imbroglis in 2015 when companies such as Walt Disney and Southern California Edison shipped in Indian tech workers from Indian outsourcing firms. They then had their in-house workers train them under threat that they would not receive severance, and then, when the job was done two months later, promptly fired them. The companies mentioned claim that they did nothing wrong and that the move would end up saving more jobs in the long run. The new Bill is one of many Bills that have been introduced or reintroduced in Congress to crack down on the H-1B visa programme.

### **'Buy American' and 'Hire American' policies**

In a related development, US President Donald Trump signed an executive order last week to promote 'Buy American' and 'Hire American' policies. Among other measures, the order directed four government departments to ensure that H1B visas are awarded to the most-skilled or highest-paid applicants. Reportedly, the Trump Administration is of the view that the lottery system led to companies such as Tata Consultancy Services, Cognizant Technology Solutions and Infosys ending up with most of the allocated visas.

### **Additional H-2B Visas**

Also, the Trump administration has announced a one-time increase of 15,000 additional H-2B visas for low-wage foreign workers after determining that the needs of US businesses cannot be satisfied with Americans willing and qualified to do the work. US businesses in danger of suffering irreparable harm due to a lack of available temporary nonagricultural workers will be able to hire up to 15,000 additional temporary nonagricultural workers under the H-2B programme, the Department of Homeland Security said. To qualify for the additional visas, petitioners must attest, under penalty of perjury, that their business is likely to suffer irreparable harm if it cannot employ H-2B nonimmigrant workers during fiscal year (FY) 2017.

H-2B visas are mostly for foreign farm workers. US businesses hire people from Latin American countries. But unlike H-2B visas, there is no provision to increase the visa cap of H-1B work visas. H-2B Temporary Nonagricultural Worker program was designed to serve US businesses unable to find a sufficient number of qualified US workers to perform nonagricultural work of a temporary nature. Congress has set the annual H-2B cap at

66,000. Meanwhile, the lottery for the next fiscal year 2018 has opened without any changes. The unofficial deadline for the Trump administration to enact H-1B visa reform indicates that Trump's promised reform of the system may be off the table or long delayed. More oversight is a good start, but employers can still use the program legally to depress wages and replace American workers.

## **6. Arguments For and Against H1b**

### **The Argument for H1B**

Defendants of H1B i.e. the outsourcing companies believe that they are indeed adding to the value chain. They believe that a large number of people are employed in the United States, thanks to the work they do. As a result, the American government reaps huge amounts in taxes. Also, the relatively cheap labor helps to keep the cost of living low. This enables the government to have lower inflation. The outsourcers have repeatedly pointed out at these numbers to convince average Americans that they are better off with H1B visa workers than without them.

### **The Argument against H1B**

Donald Trump and his brand of patriotic Americans are frowning upon the explanation being given by these outsourcers. They believe that H1B visa workers are not exceptionally skilled workers that are brought into the United States to perform some complex tasks. Instead, most of the tasks that these people perform are routine back office jobs. These jobs require a medium level of skill that is available to the American population. According to Trump, there is no need to import these workers. In fact, these jobs pay relatively well i.e. close to the median American wage. Hence, these jobs could very well be the bedrock of the resurgence of the dwindling American middle class. Trump believes that visa programs are routinely abused. There may be some truth to it. But recklessly implementing anti-immigration policies has several drawbacks.

### **Makes America Less Competitive**

Donald Trump wants to make America great again. However, it was the economic freedom that made America great in the first place. Right through the ages, America has benefitted from the fruits of people who came in to make a better life. Without immigrants, America would face a severe crunch of people who would start or manage huge companies. Apple's founder Steve Jobs was born to immigrant parents. Microsoft CEO Sathya Nadella is also of Indian origin, and so is Google's Sundar Pichai. If Trump's proposals are brought into effect, a lot of these people would not be in the United States. They would be taking their hard work and innovation to another country and making it great! Making America great again should be about attracting more talent and not deporting the one that is already there!

### **More Outsourcing**

With Trump's rules in place, companies would have to work with the limited talent pool that the American universities churn out. It is a well-known and well-documented fact that American Universities churn out few students from Science, Technology, Engineering and Math students. These degrees are most commonly pursued by immigrants.

Hence, companies would be faced with the choice of cheaper talent elsewhere versus expensive American talent. Most companies would simply outsource their jobs to other

countries across the world. Low-cost destinations like India, China, and Philippines, would be more than happy to accept the increased work opportunities created by H1B visa reforms. Organizations today have gone global. No country can single-handedly enforce protectionist policies even if that country happens to be America. Donald Trump may end up creating more of the problems that he wanted to get rid of!

### **Colleges Lose Money**

The education sector in the United States will also be hit severely by the H1B visa ban. This is because a large number of immigrants into the United States are from India and China. These immigrants come as students and obtain college degrees from American universities. Once these degrees are obtained, these people then pursue jobs in the United States itself. If there is no prospect of future employment in the United States, there would be no reason for Indians and Chinese to opt for extremely overpriced American education. This would cause a lot of college seats in the United States to stay empty or be filled only after giving huge scholarships. To make up for the loss American Colleges may have to raise tuition fees. This would further exacerbate the circle i.e. fewer Americans with technical knowledge and STEM degrees pushing the jobs overseas.

### **7. Why The Changes Are Being Made?**

While the obvious intent is to make it difficult to replace US employees with foreign workers,

### **8. What Will Be The Impact Of Such Changes?**

The Indian technology industry is a multi-billion dollar behemoth. Around 55% of the work of these giant corporations comes from America. Indian IT sector, which contributes 9.3 per cent to the country's GDP, is one of the largest private sector employers at 3.7 million people. The US contributes nearly 62 per cent of the exports, while EU is the second largest market for Indian IT services exporters contributing approximately 28 per cent. Also, around 15% of the workforce is deployed in the United States using visas like H1B, L1, etc. H1B happens to be the most used since it allows for workers to stay for 6 straight years in the United States. Hence, outsourcing companies are saved the trouble of the administrative costs that arise from sending people over to the United States over and over again. This nonimmigrant long term work visa has drawn a lot of flak after it has repeatedly been used to displace American workers.

Indian outsourcing firms such as Infosys, Wipro, Tata Consultancy Services will be badly hit. In reaction to the news, stock prices of information technology companies fell by 9%. TCS and Infosys are already battling lawsuits in federal courts that allege that they discriminate against American workers while hiring and favour South Asians. The recent overhauling of the H1B visa policy under the Trump Administration, has led to rising concerns and uncertainties on issuance of visas in the Indian IT industry. For instance, the revised H1B visa guidelines prescribe for certain eligibility criteria like minimum educational qualifications, requirement of establishing that a particular position is a specialty occupation etc. The US Citizenship and Immigration Services had also recently clarified that an entry level computer programmer position would not generally qualify as a position in a "specialty occupation". A

position of "specialty occupation" requires higher education and would typically include scientist, engineers, skilled computer programmers, etc. The impact of these guidelines are, therefore, likely to be felt by entry-level IT recruits the hardest, many of whom travel to and are regularly outsourced to the US, for projects of US companies. How will Indian IT companies be impacted if the lottery system is replaced with, let's say, a system where applications with the highest salaries are given preference? Analysts at Nomura Financial Advisory and Securities (India) Pvt. Ltd point out that if the way ahead is 'higher-salary first', the annual H1B quota could be filled at a minimum salary of \$75,000, with more than 50% of the quota being filled by applications where the salary is higher than \$90,000. The majority of LCA (labour condition application) filings by Indian companies last year were for salary levels below \$75,000. If these companies raise salary levels for on-site staff to \$75,000 to try and get a higher share of the H1B quota, their margins can be impacted by 40-120 basis points, the brokerage says. One basis point is one-hundredth of a percentage point. Another option is to hire locals, although this route too will result in lower profit margins. Of course, this analysis is restricted to the impact of only a change in the lottery system. If the US government follows up with laws that raise minimum salary levels, the impact will be much higher. For its calculations, Nomura has used publicly available data for LCA filings, where company-wise data is available to an extent, and extrapolated it for H1B applications data, where a company-wise break-up is not available. An LCA filing, which is a prerequisite for getting an H1B visa includes filings for new visas, renewals as well as visa transfers. There were 648,000 LCA filings last year, of which around 233,000 were for new H1B visas. According to Nomura's calculations, if average salary levels are raised to \$75,000, TCS and Cognizant's average salary for H1B applications would rise by 13%, 9% and 4% respectively, compared to current levels. The impact for Wipro Ltd and HCL Technologies Ltd is estimated at 9%, resulting in a 50-60 basis point hit on margins. Between October 2015 and September 2016, there were a total of 233,000 H1B visa applications against the total quota of 85,000 visas. With this quota, 20,000 visas are allotted to applicants with a Master's degree and 6,800 visas to applicants from Singapore and Chile. Adjusted for these sub-quotas, there were 3.5 applications for every one visa on offer. In the following two years, ending September 2017 and September 2018, the number of applications stood at 236,000 and 199,000 respectively. Since there is roughly a 30% chance of getting a visa for every application, companies, the allegation goes, apply for a far higher number of visas than they actually need, with a view to increasing their chances at allotment. If the US government decides on a highest-salary first policy, the number of applications can be expected to fall. According to Nomura's calculations, most tier-1 companies (excluding TCS) will not have issues procuring visas, since 32-55% of their LCA filings were for positions with a salary level greater than \$75,000. In TCS's case, only 10% of LCA filings fell in this bracket. IT trade body Nasscom has said that US President Donald Trump's executive order on seeking proposals to reform the H-1B visa system is unlikely to have any immediate impact on the country's technology industry and termed this as a persistent campaign to discredit the sector. "No new changes are being implemented immediately. The

President's executive order directs the federal bureaucracy to enforce visa law more vigorously, and to study new ways to reform and restrict the H-1B system. Nothing is being proposed that would impact or change the FY18 H-1B lottery that is currently underway," Nasscom said in a statement. Terming the proposed changes as forward-looking and non-specific, Nasscom said any move to replace the existing lottery system to select the H-1B applicants based on most skilled or highest paid would have intended consequences. "Using salary levels as the metric is not necessarily the best indicator of benefits to the US economy and unless such a system reflects variations in prevailing wages in all parts of the US, it could give advantage to certain regions such as Silicon Valley over other regions of the US," Nasscom said. The trade body felt that using skill levels as the metric would put federal bureaucrats in the role of technology consultants and human resource specialists. "There is simply too much variety and dynamism in the skill sets needed for such a system to work under the direction of federal bureaucrats," it said. Nasscom reiterated the point that persistent myths surrounding H-1B visas as cheap labour or displacing American workers as inaccurate. "The fundamental issue is the shortage of highly-skilled domestic talent in the United States, in IT, healthcare, education, and other fields. The H-1B visa system exists specifically because of the persistent shortage of highly-skilled domestic talent in the United States," the statement said. In his latest border-closing move, US President Donald Trump issued an April 18 executive order to review the H-1B visa programme, which enables educated migrants with specific skills to work temporarily in the US. Silicon Valley was critical of Trump's move, saying that there is a shortage of qualified Americans working in the industry. US companies, especially those in the technology sector, often employ H-1B visa holders to fill positions that are difficult to recruit for within the country. Beyond hurting American tech companies, the executive order would disproportionately impact one international ally: India. Over 70% of all H-1B visas issued each year are given to Indians and 85% of H-1B visas in the technology sector go to Indians. India-based outsourcing companies Tata Consultancy Services and Wipro processed 7,149 and 4,022 H-1B visas, respectively, for American firms in 2014, according to the New York Times. Trump's executive order follows through on his campaign pledge to "buy American, hire American". The H-1B review is intended to tackle "fraud and abuse" in the system and may impose greater regulation, such as raising salary thresholds and only awarding visas to the most highly-educated and skilled applicants among those who qualify.

### 9. How Is India Responding?

The H1B reforms have ushered in a sense of fear about uncertain future among the Indian Companies which are highly dependent on these visas. The impact of the proposed reforms would be visible in almost all segments of the companies. Stakeholder Companies are making different policy changes to successfully sail through the uncertain period. Mahindra, the Indian cars-to-technology conglomerate, plans to boost US investment as it prepares for the prospect that President Donald Trump will cut quotas for the H1B visas needed to service clients at its outsourcing business. US investment and employment will be doubled in five years by automaker Mahindra and Mahindra Ltd.

Mahindra has already invested \$1 billion and employs 3,000 people in the country. The future of the H1B program, which allows US companies to employ foreign workers in specialist roles, has hung over Indian outsourcers since Trump was elected promising to restore jobs for US workers. Tech Mahindra Ltd, the IT services business, has been a top 10 sponsor of visas in the past three years, according to data from myvisajobs.com. About half of Tech Mahindra's workers in the US are on H1Bs, president of strategic verticals Lakshmanan Chidambaram told reporters in New York. To prepare for any cut in visas, the company is hiring more Americans and building relationships with schools as it seeks to increase its headcount to 5,000 from 2,300 now. "It's misunderstood what Indian tech companies mean for US economy," said Goenka. "We are creating US jobs, not taking US jobs," said Goenka, who himself received an H1B visa and eventually got citizenship. The US is the second biggest market for the Mahindra group and the largest for Tech Mahindra. "We are a big believer in America," said group chairman Anand Mahindra, adding liberal education in the US is good for technology talent because it teaches people to think broadly and deal with uncertainties. Meanwhile at the summit level, Indian Government is trying to work out things smoothly with US government to prevent any adverse impact on Indian Companies and their H1B visa employees in US. However, US has not made any 'comprehensive changes' in its work visa programmes, including H-1B visas, so far despite India taking up the issue with the American government from time to time. Commerce and Industry Minister Nirmala Sitharaman said that the problems being faced by the IT industry have been raised by India with the US government from time to time at various levels. India has also taken up the matter on US visa fee hike in the dispute settlement body of the World Trade Organization (WTO), she said in a written reply to the Lok Sabha. "The US has not made any comprehensive changes to the work visa programmes including H-1B visas so far," she said. The minister also said India has made continuous efforts to raise concerns pertaining to IT and ITeS industries in different bilateral meetings including in the Trade Policy Forum. Indian IT industry has raised concerns over the proposed changes in the US visa regime. Any changes may result in higher operational costs and shortage of skilled workers for the USD 110 billion Indian outsourcing industry.

### 10. Conclusion

In today's globalised world, no country can remain immune to the changes in another country's policies and the effect becomes even more prominent when world's largest economy is in picture. As the erstwhile globalised world seeks to enter a more protectionist regime, India needs to ensure that the interests of various stakeholders in global economic process are protected. Indian IT companies, at the same time, cannot afford to totally depend on the government to address such issues. They need to proactively make policies which may sustain and sail themselves through the times of upheaval. To sum it up, on a broader level, protectionism doesn't work. The world has seen many attempts at protectionism and the history books are full of failure stories. Maybe, we are headed towards another one or maybe not. However, the road to blocking of H1B visas will be a lengthy one wherein no immediate action is expected.

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